11-3-2015

State v. Boat Appellant's Reply Brief Dckt. 42651

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. LISA MARIE BOAT, Defendant-Appellant.	)	NO. 42651 TWIN FALLS COUNTY NO. CR 2014-2490 REPLY BRIEF

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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District Judge

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STATEMENT OF THE CASE

Nature of the Case

When the police came looking, Lisa Boat initially concealed her abusive boyfriend, Jose Benitez, from them. However, she eventually whispered to one of the officers that Mr. Benitez was hiding in her attic and, thereafter, the police were able to extract Mr. Benitez from the attic and arrest him. Based on her initial statements, Ms. Boat was charged with harboring a wanted felon. At trial, her defense was that she shielded Mr. Benitez from the police because she feared Mr. Benitez would hurt, or even kill, her if she gave him up. Nevertheless, the district court refused her request to instruct the jury as to the "threats and menaces" defense. Not having received this critical instruction, the jury ultimately convicted Ms. Boat.

On appeal, Ms. Boat contends the district court erred in refusing to give her requested "threats and menaces" defense instruction because her theory of defense was supported by a reasonable view of the evidence. Specifically, because the evidence showed Mr. Benitez had engaged in a pattern of physical and emotional abuse against Ms. Boat and was desperate to avoid capture, and because Ms. Boat eventually *whispered* to officers that Mr. Benitez was in the attic, a reasonable view of the evidence supported the conclusion that Ms. Boat hid Mr. Benitez from the police out of fear for her safety.

In response, the State contends there is no reasonable view of the evidence supporting a "threats and menaces" defense. It offers two arguments in this regard. First, it argues that, because Mr. Benitez's pattern of prior abuse was not specifically tied to the day in question, and that other circumstantial evidence suggests Ms. Boat was not acting out of fear, the jury could not have reasonably have found Ms. Boat not

guilty based on a "threats and menaces" defense. (*See* Respondent's Brief, p.10.) Second, the State argues that even if an implied threat to Ms. Boat would give her a defense under Idaho law, because defense counsel's requested instruction covered only explicit threats (and there was no evidence of an explicit threat in this case), the district court did not err in refusing to give the requested instruction. (*See* Respondent's Brief, p.9.)

The present Reply Brief is necessary to briefly address a number of discrete points.

Statement of the Facts and Course of Proceedings

The factual and procedural histories of this case were previously detailed in Ms. Boat's Appellant's Brief. Therefore, they are not repeated here.

ISSUE

Did the district court err in refusing to instruct the jury on the "threats and menaces" defense, as requested by Ms. Boat?

ARGUMENT

The District Court Erred In Refusing To Instruct The Jury On The "Threats And Menaces" Defense

The State's Respondent's Brief raises a handful of points which require further explication.

First, with regard to the applicable standard of review, the State cites Court of Appeals precedent for the proposition that a district court's failure to give a requested instruction is reviewed for an abuse of discretion. (*See* Respondent's Brief, pp.7-8 (quoting *State v. Eby*, 136 Idaho 534, 539-40 (Ct. App. 2001).) While the cited Court of Appeals authority supports that proposition, the Idaho Supreme Court has held otherwise. As noted in Ms. Boat's Appellant's Brief (p.9), the Supreme Court has held that the question of whether the district court erred in refusing to instruct the jury on a certain defense is subject to *de novo* review. *See State v. Barton*, 154 Idaho 289, 290 (2013). And this makes sense because part of the analysis is whether the instruction correctly sets forth the law, and the other part of the analysis is whether there is an *objectively reasonable* view of the evidence to support the giving of the instruction—both questions that are generally reviewed *de novo*.

Second, turning to the merits, the State argues that, because Mr. Benitez's pattern of prior abuse was not specifically tied to the day in question, and because other circumstantial evidence suggests Ms. Boat was not acting out of fear, the jury could not have reasonably have found Ms. Boat not guilty based on a "threats and menaces" defense. (*See* Respondent's Brief, p.10.) However, the State's argument calls upon this Court to believe the State's cited evidence over the evidence cited by Ms. Boat, which is not the proper analysis; this Court is not a thirteenth juror. As noted, the

question is only whether there is evidence from which a reasonable jury could have found Ms. Boat not guilty. Certainly, a reasonable juror could have concluded that, based on the pattern of abuse Ms. Boat suffered at the hands of Mr. Benitez, and Ms. Boat's actions on the day in question, she acted out of fear for her safety.

Third, and also relating to the merits, the State argues alternatively that, assuming an implied threat to Ms. Boat would give her a defense under Idaho law, because defense counsel's requested instruction covered only explicit threats (and there was no evidence of an explicit threat in this case), the district court did not err in refusing to give that requested instruction. (*See* Respondent's Brief, p.9.) Ms. Boat disagrees with the State's characterization of the requested instruction. The relevant portion of the requested instruction states: "The defendant contends that at the times the crime was committed, the defendant was acting under duress or coercion because *the defendant was threatened by Jose Benitez and ordered by Jose Benitez to not tell police officers that he was in Lisa Boa[t]'s home.*" (R., p.82 (emphasis added).) This instruction was requested prior to trial (*see generally* R., pp.80-82), at a time when the defense may have anticipated evidence of an explicit threat. Obviously, that evidence did not come out. Nevertheless, Ms. Boat submits the quoted language's reference to a "threat" and "order" is broad enough to encompass an *implied* threat and order, as well as an explicit threat and order. (*Cf.* Appellant's Brief, p.11 (arguing that a threat may be implied).)

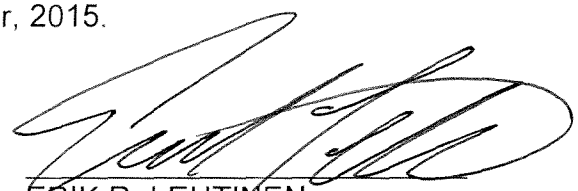
Finally, on the subject of implied threats, the State argues in a footnote that "Boat appears to argue that if the defendant has been a victim of domestic violence then there is always an implied threat," and it goes on to assert that "Boat does not offer authority

to support this argument." (Respondent's Brief, p.10 n.1.) The State's contentions are misleading at best. Ms. Boat did not offer authority in support of the argument cited because she never raised such an argument. The argument cited by the State is a "straw man"; it represents a gross distortion of the argument actually made—that under the totality of the circumstances in this case (including, but certainly not limited to, Mr. Benitez's history of domestic violence toward Ms. Boat) there is a reasonable view of the evidence that supported the giving of a "threats and menaces" defense instruction. (*See* Appellant's Brief, pp.12-13.)

CONCLUSION

For the reasons set forth herein, and in Ms. Boat's Appellant's Brief, Ms. Boat respectfully requests that her conviction and sentence be vacated, and that her case be remanded to the district court for a new trial where the jury may be properly instructed.

DATED this 3rd day of November, 2015.



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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 3rd day of November, 2015, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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